



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

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5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

DEPARTMENT ORDER

IN THE MATTER OF

H.R.C. – VILLAGE AT LITTLE FALLS, L. L. C.) SITE LOCATION OF DEVELOPMENT ACT
Windham, Cumberland County) NATURAL RESOURCES PROTECTION ACT
VILLAGE AT LITTLE FALLS) WETLAND OF SPECIAL SIGNIFICANCE
L-23637-87-A-N (approval)) WATER QUALITY CERTIFICATION
L-23637-2G-B-N) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 481 et seq. and 480-A et seq., and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of H.R.C. – VILLAGE AT LITTLE FALLS, L. L. C. with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes to construct an 85-unit condominium development with associated improvements on an 8.03-acre parcel of land. The proposed project includes two 12-unit apartment buildings, nine duplexes, nine porch-style units, 33 townhouse units, and one single-family residence. The proposed project is shown on a set of plans, the first of which is entitled "Cover/Index/Locus Map/Zoning – Village at Little Falls," prepared by Northeast Civil Solutions, and dated June 1, 2007, with a last revision date of July 11, 2007. The project site is located between Depot Street and the Presumpscot River in the Town of Windham.

The proposed project triggers the "structure" threshold of the Site Location of Development Law ("Site Law," 38 M.R.S.A. § 482). The Town of Windham has delegated review authority pursuant to 38 M.R.S.A. § 489-A to conduct Site Law reviews of certain developments that would otherwise require Department review. However, the local reviewing authority requested that the Department review the proposed project.

The applicant is also seeking approval under the Natural Resources Protection Act (N.R.P.A.) to remove an abandoned mill building adjacent to the Presumpscot River and restore the river bank. Since a portion of the building was constructed over the river, this activity will result in the alteration of approximately 4,800 square feet of the river. A majority of the existing wall of the building will be removed, and the area will be regraded to in order to establish a vegetated river bank. A small section of the wall will be left in place to support an existing power plant. Other N.R.P.A. activities proposed by the applicant include filling in a small, artificially-created drainage channel (740 square

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feet) and constructing stormwater outfall pipes within 75 feet, but not below, the 100-year flood elevation of the river.

B. Current Use of Site: An abandoned mill building and associated piles of debris occupy the site. The building was originally used as a pulp mill and later used as a steel mill. It is located directly on the Presumpscot River and is constructed on a pile-type foundation to allow the river to flow under the western end of the building. The building was abandoned in the late 1980's. The site is immediately downstream of an existing hydro-electric dam owned by Sappi, Inc.

2. FINANCIAL CAPACITY:

The total cost of the project is estimated to be \$10,000,000. The applicant stated that the project will be self-financed. Hudson Realty Capital Fund III, L. P. is the owner of HRC – Village at Little Falls, L. L. C. The applicant submitted a Balance Sheet for Hudson Realty Capital Fund III, L. P., dated December 31, 2006, which indicates that the company's total assets are well in excess of the proposed project's cost estimate.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards.

3. TECHNICAL ABILITY:

The applicant provided a list of projects successfully constructed by the applicant. The applicant also retained the services of Northeast Civil Solutions, a professional engineering firm, to assist in the design and engineering of the project.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. NOISE:

The Department finds that no regulated sources of noise have been identified.

5. SCENIC CHARACTER:

The project site currently contains a dilapidated industrial building. The building will be removed from the site and the river bank will be restored to a more natural, vegetated state. The proposed development was designed to match the village character of the surrounding neighborhood.

Based on the project's location and design, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

6. WILDLIFE AND FISHERIES:

The Maine Department of Inland Fisheries & Wildlife (MDIFW) reviewed the proposed project. In its comments, MDIFW stated that it found no records of any Essential or Significant Wildlife Habitats, or other wildlife habitats of special concern associated with this site.

The project site is located just downriver from an existing housing development and hydroelectric dam. A portion of the land directly adjacent to the Presumpscot River is owned by an abutter, Sappi Paper. A fisheries biologist from MDIFW commented that the Presumpscot River supports a variety of coldwater and warmwater fisheries, including some non-game fish populations. MDIFW recommended that a 100-foot wide vegetated buffer be provided to minimize impacts to the river and protect riparian functions, particularly in the area where the existing mill building is to be removed. The applicant responded to these concerns by revising the plans to provide a minimum 75-foot wide vegetated buffer on the project site. The only permanent structures within the 75-foot buffer will be three stormwater outfall pipes with associated riprap aprons and a portion of a subsurface stormwater system. The applicant submitted a river bank stabilization and planting plan (Sheet L1 of the set of plans referenced in Finding 1, last revised July 11, 2007) depicting the proposed improvements. Given the heavily developed nature of the site; the removal of the mill building, the stabilization of existing erosion problems, and the re-vegetation of the river bank are anticipated to provide immediate and long-term water quality benefits to the fishery.

The buffer will be located in a common area. Once the buffer is stabilized and planted, it should remain undisturbed, and be maintained first by the applicant and subsequently by the condominium owners association. Some disturbance of the buffer may be necessary in the future where a portion of the subsurface stormwater system is located within the buffer in the unlikely event that maintenance of the chamber system is required. However, the isolator row, which will require regular maintenance as discussed in Finding 10, is located outside the buffer.

Prior to occupancy of the first new building, the location of the river buffer must be permanently marked on the ground. The deed for the common area must contain deed restrictions relative to the buffer and have attached to it a plot plan for the area, drawn to scale, that specifies the location of the buffer. Prior to occupancy of the first new building, the applicant must submit a copy of the recorded deed restrictions, including the plot plan, to the BLWQ.

The Department finds that the applicant has made adequate provision for the protection of wildlife and fisheries with the establishment of a 75-foot wide vegetated buffer adjacent to the Presumpscot River.

7. HISTORIC SITES AND UNUSUAL NATURAL AREAS:

The Maine Historic Preservation Commission (MHPC) reviewed the proposed project and requested a Phase II Archaeological Survey of the site. The applicant submitted a report of the survey, prepared by NEA and dated June 2007. MHPC reviewed the report and stated, in a letter dated June 27, 2007, that the proposed project will have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

The Maine Natural Areas Program database does not contain any records documenting the existence of rare or unique botanical features on the project site and, as discussed in Finding 6, MDIFW did not identify any unusual wildlife habitats located on the project site.

The Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites or unusual natural areas either on or near the development site.

8. BUFFER STRIPS:

A vegetated buffer adjacent to the Presumpscot River will be established as discussed in Finding 6.

The Department finds that the applicant has made adequate provision for buffer strips.

9. SOILS:

The applicant submitted soil survey information and a geotechnical report based on the soils found at the project site. This report was prepared by a registered professional engineer and reviewed by staff from the Division of Environmental Assessment (DEA) of the Bureau of Land and Water Quality (BLWQ). DEA also reviewed a Blasting Plan (dated March 19, 2007) submitted by the applicant and outlining the proposed procedures for removing ledge material from the project site. The applicant submitted additional information related to the blasting location map. DEA reviewed this additional information and commented that the applicant adequately addressed its concerns.

If a rock crusher will be utilized on site during construction, the applicant must insure that the crusher is licensed by the Department's Bureau of Air Quality and is being operated in accordance with that license.

The Department finds that, based on the soil information, geotechnical report, Blasting Plan, and DEA's review, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices.

10. STORMWATER MANAGEMENT:

The proposed project includes approximately 3.1 acres of new impervious area and 7.5 acres of developed area. It lies within the watershed of the Presumpscot River. The applicant submitted a stormwater management plan based on the basic, general, and flooding standards contained in Department Rules, Chapter 500. The proposed stormwater management system consists of 17 bioretention cells and a subsurface soil filter system (Stormtech system with isolator rows).

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPS, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of the Division of Watershed Management (DWM) of the Bureau of Land and Water Quality (BLWQ). DWM recommended that the applicant implement a dewatering plan during construction. The plans were revised to include a dewatering plan.

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor. Prior the start of construction, the applicant must conduct a pre-construction meeting to discuss the construction schedule and the erosion and sediment control plan with the appropriate parties. This meeting must be attended by the applicant's representative, Department staff, the design engineer, and the contractor.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. This plan was reviewed by, and revised in response to the comments of DWM. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. A homeowners' association will be established that will be responsible for the maintenance of all common facilities including the stormwater management system. The Declaration of Covenants and Restrictions for the association was reviewed and found to meet Department requirements. Prior to the formation of the homeowners' association, the applicant will be responsible for all such maintenance

The applicant submitted a draft service contract for the ongoing maintenance of the stormwater management system. Prior to occupancy of the first new building, the applicant must submit a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) for the on-going maintenance of the stormwater control structures to the BLWQ. Storm sewer grit and sediment materials removed from

stormwater control structures during maintenance activities must be disposed of in compliance with the Department's Solid Waste Management Rules.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on DWM's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(A).

B. General Standard: The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using Best Management Practices (BMP) that will control runoff from no less than 95% of the impervious area and no less than 80% of the developed area.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to, comments from DWM. After a final review, DWM commented that the proposed stormwater management system is designed in accordance with the Chapter 500 General Standard. DWM recommended that the installation of the stormwater system be inspected by the applicant's design engineer or other qualified professional. Upon completion of the system, the applicant must submit written certification to the BLWQ that it was installed in accordance with the approved plans.

Based on the stormwater system's design and DWM's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500, Basic and General Standards.

C. Flooding Standard:

The applicant is not proposing a formal stormwater management system to detain stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. Instead, since the project site is located adjacent to the Presumpscot River, the applicant requested a waiver from the flooding standard pursuant to Department Rules, Chapter 500(4)(E)(2)(a). DWM commented that, given the site's location and watershed, the proposed system is eligible to receive a waiver from the flooding standard.

Based on the system's design and DWM's review, the Department finds that the applicant has demonstrated that the Chapter 500, Flooding Standard for peak flow from the project site, and channel limits and runoff areas, may be waived for the proposed project.

11. GROUNDWATER:

The project site is not located over a mapped sand and gravel aquifer. The proposed project does not propose any withdrawal from, or discharge to, the groundwater.

The applicant received a Voluntary Response Action Program (VRAP) permit from the Department's Bureau of Remediation and Waste Management, dated November 9, 2005, to conduct remedial actions on the site. Any special or hazardous wastes encountered during site development will be disposed of in accordance with the standards and regulations outlined in the VRAP permit.

The Department finds that the proposed project will not have an unreasonable adverse effect on ground water quality.

12. WATER SUPPLY:

When completed, the proposed project is anticipated to use 17,010 gallons of water per day. Water will be supplied by the Portland Water District. The applicant submitted a letter from the District, dated March 16, 2007, indicating that it will be capable of servicing this project.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

13. WASTEWATER DISPOSAL:

When completed, the proposed project is anticipated to discharge 17,010 gallons of wastewater per day to the Portland Water District's wastewater treatment facility located in Westbrook. The applicant proposes to construct a sewer pump station that will be owned and operated by the Portland Water District. The applicant submitted a letter from the Portland Water District, dated March 16, 2007, stating that the Westbrook facility will accept these flows. This project was reviewed by the Division of Water Quality Management of the Bureau of Land and Water Quality (DWQM), which commented that the Portland Water District's Westbrook facility has the capacity to treat these flows and is operating in compliance with the water quality laws of the State of Maine.

Based on DWQM's comments, the Department finds that the applicant has made adequate provision for wastewater disposal at a facility that has the capacity to ensure satisfactory treatment.

14. SOLID WASTE:

When completed, the proposed project is anticipated to generate 110 tons of household solid waste per year. All general solid wastes from the proposed project will be disposed

of at EcoMaine, which is currently in substantial compliance with the Solid Waste Management Regulations of the State of Maine.

The proposed project will generate a minimal amount of stumps and grubblings. All stumps and grubblings generated will be processed on site, with the remainder to be either worked into the soil or utilized as an erosion control measure, in compliance with Solid Waste Management Regulations of the State of Maine.

The proposed project will generate approximately 920 tons of construction debris and demolition debris. The construction and demolition debris generated will be disposed of at either Plan-It Recycling in Gorham or Riverside Recycling in Portland, both of which are currently in substantial compliance with the Solid Waste Management Regulations of the State of Maine.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

15. FLOODING:

The applicant submitted a Conditional Letter of Map Revision from the Federal Emergency Management Agency, dated May 8, 2007. Based on this letter, the proposed project is not located within the 100-year floodway of any river or stream.

The Department finds that the proposed project is unlikely to cause or increase flooding or cause an unreasonable flood hazard to any structure.

16. WETLAND IMPACTS:

The applicant proposes to alter approximately 4,800 square feet of a waterbody to remove an existing abandoned mill building and restore the bank of the Presumpscot River. The applicant also proposes to fill 740 square feet of an artificially-created drainage channel and construct stormwater outfalls within 75 feet of the river.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require the applicant to meet the following standards:

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a Natural Resources Protection Act permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The applicant submitted an alternative analysis for the proposed project completed by Northeast Civil Solutions. The applicant's original plan included leaving the mill building's wall and then filling in behind it. The proposed project, removing the wall and restoring the river bank in this

location, represents less environmental impact. The applicant proposes to remove the debris from the edge of the river and grade the area to create a stable slope.

B. Minimal Alteration. The amount of waterbody and wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant stated that the fill within the river is necessary in order to create a stable, vegetated slope after removal of the mill building. The existing mill building is constructed on piles over a portion of the river. The proposed project includes removal of the building, and the restoration of 28,680 square feet of river bank and approximately 2,165 square feet of floodplain downstream of the existing hydro-electric dam.

C. Compensation. Given the existing developed nature of the project site, compensation is not required to achieve the goal of no net loss of wetland and waterbody functions and values. The proposed project is expected to have a positive effect on the quality of the site's stormwater runoff. The removal of the mill building and the restoration of the river bank will allow for the cooling of the runoff to avoid thermal impacts, and site remediation under the VRAP permit will result in the removal of multiple sources of pollution that currently exist on site. The additional flood plain storage area created by the removal of the building and restoration of the river bank is approximately equivalent in volume to the fill proposed in the river.

The Department finds that the applicant has avoided and minimized wetland and waterbody impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.

- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S.A. Section 480-P.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 481 et seq.:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.
- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities provided the buffer adjacent to the Presumpscot River is marked and protected as described in Finding 6 and any rock crusher is operated as described in Finding 9.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil.
- D. The proposed development meets the standards for storm water management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C provided a pre-construction meeting is held and inspections of the stormwater system are conducted as described in Finding 10.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities, solid waste disposal and roadways required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities and roadways in the municipality or area served by those services.

- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of H.R.C. – Village at Little Falls, L. L. C. to construct an 85-unit condominium development as described in Finding 1 in Windham, Maine, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. The applicant or other responsible party shall, within three months of the expiration of each five-year interval from the date of this Order, submit a report certifying that the items listed in Department Rules, Chapter 500, Appendix B(4) have been completed in accordance with the approved plans.
5. Prior the start of construction, the applicant shall conduct a pre-construction meeting. This meeting shall be attended by the applicant's representative, Department staff, the design engineer, and the contractor
6. Prior to occupancy, the location of the buffer adjacent to the Presumpscot River shall be permanently marked on the ground.
7. The deed for the common area shall contain deed restrictions relative to the buffer and have attached to it a plot plan for the area, drawn to scale, that specifies the location of the buffer. Prior to occupancy of any new building, the applicant shall submit a copy of the recorded deed restrictions, including the plot plan, to the BLWQ.
8. If a rock crusher will be utilized on site during construction, the applicant shall insure that the crusher is licensed by the Department's Bureau of Air Quality and is being operated in accordance with that license.

9. Prior to occupancy of any new building, the applicant shall submit a copy of an executed long-term maintenance contract (minimum of 5 years and renewable) for the on-going maintenance of the stormwater control structures to the BLWQ.
10. The installation of the stormwater system shall be inspected by the applicant's design engineer or other qualified professional. Upon completion of the system, the applicant shall submit written certification to the BLWQ that it was installed in accordance with the approved plans

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED AT AUGUSTA, MAINE, THIS 26TH DAY OF JULY, 2007.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

By:

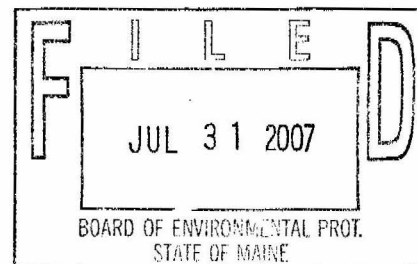

DAVID P. LITTELL, COMMISSIONER

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application March 27, 2007

Date of application acceptance April 5, 2007

Date filed with Board of Environmental Protection
MR/ATS#64978&64979/L23637AN&BN



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SITE LOCATION OF DEVELOPMENT (SITE)
STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL
IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL.

1. This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents is subject to the review and approval of the Board prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited, without prior approval by the Board of Environmental Protection, and the applicant shall include deed restrictions to this effect.
2. The applicant shall secure and comply with all applicable Federal, State and local licenses, permits, authorizations, conditions, agreements, and orders, prior to or during construction and operation as appropriate.
3. The applicant shall submit all reports and information requested by the Board or Department demonstrating that the applicant has complied or will comply with all conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
4. Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
5. Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
6. If the construction or operation of the activity is not begun within two years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. Reapplications for approval shall state the reasons why the development was not begun within two years from the granting of the initial approval and the reasons why the applicant will be able to begin the activity within two years from the granting of a new approval, if granted. Reapplications for approval may include information submitted in the initial application by reference.
7. If the approved development is not completed within five years from the date of the granting of approval, the Board may reexamine its approval and impose additional terms or conditions or prescribe other necessary corrective action to respond to significant changes in circumstances which may have occurred during the five-year period.
8. A copy of this approval must be included in or attached to all contract bid specifications for the development.
9. Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.

(2/81)/Revised November 1, 1979



NATURAL RESOURCE PROTECTION ACT (NRPA) STANDARD CONDITIONS

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET.SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. **Approval of Variations From Plans.** The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. **Compliance With All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. **Erosion Control.** The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. **Compliance With Conditions.** Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. **Initiation of Activity Within Two Years.** If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the applicant will be able to begin the activity within two years form the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- F. **Reexamination After Five Years.** If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- G. **No Construction Equipment Below High Water.** No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- H. **Permit Included In Contract Bids.** A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- I. **Permit Shown To Contractor.** Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.